

## **II. RESPONSE TO OFFICE ACTION**

### ***A. Status of the Claims***

Claims 6-9 were pending prior to the Office Action dated June 3, 2004. Claims 6-8 have been amended. Claims 14-23 are new. Support for the amendments may be found throughout the specification and the claims as previously pending. Support for using hematopoietic white cells can be found in the specification at page 10, lines 11-12 and in Example 19 beginning on page 77. Support for the types of DNA damage (new claim 15) can be found at page 26, line 1. Support for measuring mitochondrial redox state (new claim 20) can be found in the specification at page 47, lines 9-19.

### ***B. Information Disclosure Statements***

The Applicants' new representative (undersigned) notes that no information disclosure statement has been filed in this case and further notes that several statements requesting that an IDS be filed have been made of record by the Examiner. Applicants apologize and are endeavoring to collect references and file an appropriate IDS. However, the present case has just been received by the undersigned and we are therefore filing the present response before the abandonment date. We intend to file an appropriate IDS very shortly, hopefully before the end of the year. Applicants apologize for any inconvenience.

### ***C. Section 103 Rejections***

All of the claims have been rejected over the Yan *et al.* reference in combination with one or both of the Corral-Debrinski *et al.* references. The bases of the rejection are well represented on the record and will therefore not be repeated here. However, it appears as though neither reference is directed to the measurement of mtDNA damage in hematopoietic cells as a

means of assessing, for example, atherosclerotic risk (see, for example, example 19 of our specification, beginning on page 77). The Examiner is strongly encouraged to review these references to ensure that Applicants have not overlooked such a teaching. In any event, it is submitted that absent such a teaching, the Examiner has not and cannot make out a *prima facie* case of obviousness over these references.

The Examiner is therefore earnestly requested to reconsider and withdraw the pending rejections, and pass the case to allowance.

### CONCLUSION

Applicants believe that the foregoing remarks fully respond to all outstanding matters for this application. Applicants respectfully request that the rejections of all claims be withdrawn so they may pass to issuance.

Should the Examiner desire to sustain any of the rejections discussed in relation to this Response, the courtesy of a telephonic conference between the Examiner, the Examiner's supervisor, and the undersigned attorney at 512-536-3055 is respectfully requested.

Respectfully submitted,

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